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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,133	09/26/2003	Stephen A. Ewald	19645.1	6111

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EXAMINER

SMITH, JEFFREY A

ART UNIT PAPER NUMBER

3625

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/672,133	Applicant(s) EWALD, STEPHEN A.	
	Examiner Jeffrey A. Smith	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/26/03</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Amendment

The response filed February 7, 2005 has been entered and considered.

Claims 1-19 are pending.

Copies of the originally filed Specification, Claims, Abstract, and Drawings have been received. The copies of Specification and Abstract have been approved for entry as they remove previously indicated scanning omissions. The copies of the originally filed claims and drawings have been placed of record in the file. The originally filed Drawings are considered the currently entered drawings since there were no deficiencies noted with such Drawings. The currently entered claims are those filed February 7, 2005 as such claims contain a complete listing of the claims and are considered to supersede all previous versions (37 CFR 1.121).

An action on the merits follows.

Information Disclosure Statement

A corrected copy of PTO-1449 filed November 26, 2003 has been provided herein. The PTO-1449 has been corrected to indicate consideration of US 2002/0042754 A1. The copy mailed

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November 22, 2004 failed to indicate consideration of such reference.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-13, and 15-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Kesling et al. (US 2002/0132575 A1).

Kesling et al. discloses a method for purchasing goods and services linked with broadcast media (par. 0039 and Figs. 1-3). The method comprises receiving at at least one broadcast receiver a broadcast media including information relating to goods and services that can be purchased by persons receiving the media; selectively recording purchase data at the broadcast receiver for a good and service that a person purchases relating to the broadcast media; sending the purchase data from the

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broadcast receiver to at least one server; receiving the purchase data at the at least one server; and verifying the purchase data from the broadcast receiver at the at least one server.

Kesling et al. references U.S. application serial number 09461,699 and incorporates such application by reference. See Kesling et al. at paragraphs [0007]-[0010]. Accordingly, the disclosure of such application forms part of the Kesling et al. disclosure as of the date of the incorporation by Kesling et al.

Kesling et al. builds upon the system and method disclosed by '699. The '699 disclosure states that "the receiver is adapted to receive an input from the user by which the user is able to signal an interest in purchasing a selection of music or data being played and/or displayed" ('699 at page 2, last line-page 3, line 2). Accordingly, claims 1, 9, 12 (as amended to recite "each receiver further selectively receiving a purchase request and recording purchase data for goods and services that a person purchases relating to the broadcast media" (claim 1, for example, and similar language in claims 9 and 12), is anticipated by Kesling et al.

Regarding claim 3: the purchase data may be transmitted at a predetermined location (par. 0043).

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Regarding claims 5 and 6, respectively: Kesling discloses that the broadcast media may be an advertisement (information about the purchase of a particular good or service) or a song (no information about the purchase of a such song).

Regarding claims 7 and 8, respectively: the broadcast receiver may comprise either a single device (par. 0041) or an "intermediate transfer device" may be additionally employed as a purchase selection device (par. 0042).

Applicant's attention is directed to the Kesling et al. disclosure regarding "low" and "high" power wireless transmitters (600 and 700, respectively).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kesling et al. (US 2002/0132575 A1) in view of Official Notice regarding secure communication channels.

Kesling et al. does not disclose a secure communication channel. However, it is notoriously well-known to employ secure communication channels when endeavoring to conduct transactions of the type disclosed by Kesling. One of ordinary skill in the art would have modified the Kesling method to have included sending purchase data via a secure channel in order that confidential information relative to the customer or the customer's account is not readily intercepted.

Response to Arguments

Applicant's arguments filed February 7, 2005 have been fully considered but they are not persuasive.

Applicant remarks that "because there are no specific reasons articulated in the Office Action for the rejection of Claims 2, 4, 9-13, and 15-19 in view of *Kesling, et al*, this rejection cannot stand and must be withdrawn".

This argument is not persuasive. The Examiner notes that the claims are rejected based upon what is disclosed by Kesling et al. rather than the content of the Examiner's discussion of

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Kesling et al. The statement of the rejection identifies claims 2, 4, 9-13, and 15-19 as being rejected as being anticipated by Kesling et al. Accordingly, the Examiner's position is that the recitations of each of these claims have been clearly disclosed by Kesling et al. and required no discussion, claim mapping, or translation by the Examiner. Moreover, Applicant has not offered any argument which persuasively demonstrates that such claims are not anticipated by the Kesling et al. disclosure.

Applicant remarks that "Keslin[g], et al., discloses at most an 'information request,' and not a 'purchase request' as claimed [by] the present invention".

The Examiner first notes that Kesling et al. discloses:

"User interface 1000 also allows the receiver to receive input from a listener/user indicating an interest in a given selection. In a preferred embodiment, the user interface includes one or more buttons that can be pressed to record, select or tag the program identifier associated with the selection of interest." (par. [0041]; emphasis added)

Kesling et al. further discloses:

"If high power wireless module 700 is a transceiver, then information concerning the selected program identifiers can be sent directly back to radio 20 for almost immediate review by the listener. Thus, for example, if the listener wishes to purchase a product that has just been advertised, he can press select button 1220, and receive further information regarding the product such as price and availability. This information is preferably displayed on display 1200. The listener might even complete the

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transaction using radio 20, which, since it includes the high power wireless transceiver, can function as a conventional text pager." (par. [0066]; emphasis added)

In light of these passages it appears that Kesling et al. does, indeed, disclose a "purchase request" in the manner recited in the claims. However, further to the issue of what Kesling et al. intends to encompass by the phrase "indicating an interest" in a given selection, it is clear from the incorporated '699 application that such "interest" includes an "interest in purchasing a selection" ('699 at page 2, last line - page 3, line 2).

Applicant traverses the rejection of claim 14 under 35 USC 103 as being unpatentable over Kesling et al. in view of an Official Notice regarding secure communication channels.

The Examiner notes that it is well-settled that to adequately traverse a finding of Official Notice, an Applicant must specifically point out the supposed errors in the Examiner's action, which would include stating why the Noticed fact is not considered to be common knowledge or well-known in the art. In re Chevenard, 139 F. 2d 711, 713, 60 USPQ 239, 241 (CCPA 1943).

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Since Applicant has failed to provide an adequate traversal of the Noticed fact, the Noticed fact is taken to be admitted prior art. MPEP 2144.03(C).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Smith whose telephone number is (571) 272-6763. The examiner can normally be reached on M-F 6:30am-6:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on (571) 272-7159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeffrey A. Smith
Primary Examiner
Art Unit 3625

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